

THE RIGHTS OF PERSONS WITH DISABILITIES IN MALAYSIA: THE UNDERLYING REASONS FOR INEFFECTIVENESS OF *PERSONS WITH DISABILITIES ACT 2008*

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ABSTRACT

Persons with disabilities have the same rights with other people in which they have the equal potential to live a wholesome and fulfilling life. While Malaysia has endorsed the United Nations Convention on the Rights of Persons with Disabilities and enacted the Persons with Disabilities Act 2008 for promotion of the betterment of Persons with Disabilities, the rights of the persons with disabilities have yet to be fully practiced. The purpose of this paper is to prove the lack of effectiveness of the Persons with Disabilities Act 2008. To do so, this study analyses texts from local and international literatures. It is found that Persons with Disabilities Act 2008 merely 'promotes' the protection of rights instead of actually protecting the rights of Persons with Disabilities. It has been suggested in this paper that the statute needs to be amended to include a penalty clause and to get rid of any shielding provision in order to ensure effectiveness.

Introduction

Although not explicitly acknowledged due to the sensitivity of this issue, many would agree that persons with disabilities have almost always been the subject of discrimination and exclusion in society.¹ The United Nations, non-governmental organisations and the civil society have put a lot of effort in order to create new treaties which will help the rights of persons with disabilities to not only be taken more seriously but to actually be implemented. On 13 December 2006, *The United Nations Convention on Rights of Disabled Persons 2007* was adopted and received reputable outcome and enthusiasm by the international community.² The governments of various countries have acknowledged in regional meetings on disability that persons with disabilities have the capacity to contribute to social and economic development in their communities and have thus made commitments to adopt more inclusive policies.³

In Malaysia, the Article 8 (1) and (2) of the *Federal Constitution 1957* has provided equality of all before the law and protection for all citizens against discrimination on grounds of race, descent, or place of birth in any law.⁴ Despite this constitutional guarantee, persons with disabilities still face problems in developing themselves as they are deprived of many basic rights like education, employment, accessibility and other economic and social opportunities.

In tackling this situation, the government has made serious series of efforts to recognize and protect the rights of persons with disabilities by ratifying the *Convention on the Rights of Persons with Disabilities* adopted by the United Nations General Assembly.⁵ The Malaysian Government has also sanctioned the *Persons with Disabilities Act 2008* which reflects its recognition

¹ Rehman, Javaid. (2009). *International Human Rights Law* (Second Edition ed.): Pearson Education Ltd.

² Kayess, Rosemary, & French, Phillip. (2011). Out of Darkness into light? Introducing the Convention on the Rights of Persons with Disabilities. *Human Rights Law Review*, 8(1), 1- 34.

³ Ibid

⁴ Article 8(1) & (2) of the Federal Constitution 1957 provide as follows :-

(1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

⁵ Rehman, Javaid. (2009). *International Human Rights Law* (Second Edition ed.): Pearson Education Ltd.

to the existing and potential contributions made by persons with disabilities to the overall wellbeing and diversity of the community and society.⁶ It can be seen in the *Persons with Disabilities Act 2008* that the government acknowledges the need to remove external ‘barriers’ in reference to accessibility to physical, social, economic and cultural environments for health, education as well as information and communication in enabling persons with disabilities to fully and effectively participate in society.

However, it is surprising that reference to the *Persons with Disabilities Act 2008* when involving cases whereby the rights of persons of disabilities are denied is rather rare. This can be seen in Chart A below:-

Chart: Reported Cases Involving Persons with Disabilities Between January 2009 to July 2016

Source: Authors’ Compilation

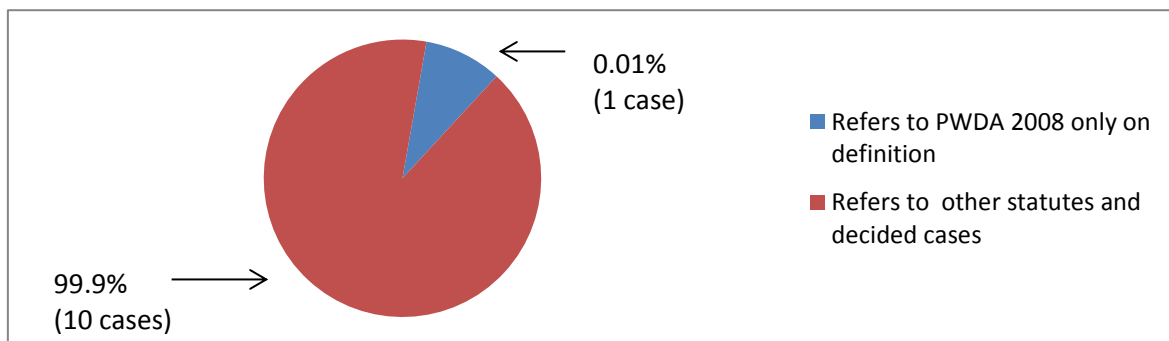


Chart A illustrates that there was only one case (in the case of *PP v. Mat Susah Sadikin*⁷) in which *Persons with Disabilities Act 2008* is quote which constitutes only 0.09% of all cases. It is important to note that the statute, in that one case, merely referred to the definition ‘person with disabilities’ in section 2⁸. Meanwhile, the other ten cases which constitutes a 99.9% of the eleven reported cases, cite other statutes supporting other decided cases.⁹ This shows that in these nine years of the enactment of *Persons with Disabilities Act 2008*, not once has this act been referred to for the purpose of protecting the rights of persons with disabilities in registered Court cases. The above evidence shows that the statute has not been effective to protect the rights of persons with disabilities.¹⁰

Therefore, this study aims to examine the underlying gaps in the *Persons with Disabilities Act 2008*.¹¹The outline of this paper is preceded by the definition of persons with disabilities in section 2.0. While section 3.0 discusses the overview of *Persons with Disabilities Act 2008* and section 4.0 elaborates the gaps in *Persons with Disabilities Act 2008* by discussing the issue on non-remedial nature of the Act, difficulty in establishing the element of good faith in section 41 of the Act and the inferiority of the Act to the *Public Authorities Protection Act 1948*. Meanwhile section 5.0 provides the findings of the study while the conclusion of the study is presented in Section 6.0.

⁶ *Persons with Disabilities Act 2008*, the Preamble

The cases referred that constitute the 99.9% are as follows :-

- (1) *Ganesan Kumarasamy v. Seranas Sendirian Berhad* [2016] 3 Ilr 171
- (2) *Abdul Razak Zainal Abidin v. Pp* [2015] 1 Lns 707
- (3) *Tan Chit Cuang & Satu Lagi v. Chua Chu Hua* [2015] 1 Lns 1302
- (4) *Joint Management Body Of Pangsapuri Sentral v. Hing Boon Chnia* [2015] 1 Lns 884
- (5) *Pp v. Mhs (Seorang Kanak-Kanak)* [2014] 5 Lns 114
- (6) *Looi Yong Guan v. P Navin Kumar Paramsothy* [2014] 1 Lns 790]
- (7) *Muhammad Husin Abdullah v. Muhammad Husin Abdul Rahim & Satu Lagi* [2013] 5 Lns 46]
- (8) *Rosli Mohd Amin & Yang Lain v. Pengarah Hospital Segamat & Yang Lain* [2011] 5 Clj 97
- (9) *Abdullah Hashim v. Robiah Achin* [2010] 3 Lns 13
- (10) *Ang Chee Keong v. Rajendran K Ratnam* [2010] 5 Lns 28
- (11) *Pp v. Mat Susah Sadikin* [2009] 5 Lns 10

⁷ [2009] 5 LNS 10

⁸ Refer to Section 2.0

⁹ The other laws referred to are the *Evidence Act 1950 (Act 56)*, *Penal Code (Act 574)*, *Employment Act 1955 (Act 265)*, *Child Act 2001 (Act 611)*, *Rules Of Courts 2012*, *Mental Disorder Ordinance 1952 (Ord. 31/52)*, *Highway Code 1959* and *Compendium of Personal Injury Awards*.

¹⁰ Fazaniza, E. (2015, September 21). Persons with Disabilities Act being studied to be improved: Azizah. *The Sun Daily*. Retrieved August 13, 2016, from <http://www.thesundaily.my/news/1559182>

¹¹ Ainul Jaria Maidin, “Legal Framework Regulating for Improving Accessibility to Built Environment for Disabled Persons in Malaysia”, p 9, 29 May 2014 <<http://ssrn.com/abstract=1992205>>

2.0 Definition Of Persons With Disabilities

United Nations Convention on the Rights of Persons with Disabilities in Article 1 defines 'disability' as:

*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*¹²

Malaysia on the other hand although adopting the definition, omitted the phrase 'on an equal basis with others'. This is evident in section 2 of *Persons with Disabilities Act 2008* which provides that:

*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society.*¹³

Section 39 of the *Persons with Disabilities Act 2008* mentions further that a person with severe disabilities is:-

...[a] person suffering from one or more disabilities who is dependent on others for basic daily living activities.¹⁴

In addition, Ministry of Women, Family and Community Development has stipulated specific categories of disabilities which includes seven categories which are hearing; vision, speech, physical, learning difficulties; mental and various or multiple disabilities. Each category has been further defined and explained in the following¹⁵:

- i. Hearing: Hearing Disabled means unable to hear clearly in both ears without the use of a hearing aid or unable to hear at all even with the use of a hearing aid. Hearing disabilities can be divided into four levels, namely:- Minimum 15 - <30 decibels (a child); 20 - <30 decibels (adults); Moderate 30 - <60 decibels; Severe 60 - <90decibels; and Profound \geq 90decibels
- ii. Vision: Visually Disabled means blind in both eyes OR blind in one eye OR limited vision in both eyes OR any other permanent visual impairment. Visual disabilities can be divided into:- Low vision means vision that is worse than 6/18 but equal to or better than 3/60 even with the use of visual aids or a visual field that is less than 20 degrees from fixation. Blindness means vision of less than 3/60 or a visual field of less than 10 degrees from fixation. ** Less than 3/60 means counting Fingers (CF), Hand Movement (HM), Perception of Light (PL) and No-Light Perception (NPL). Other permanent visual disturbances (must be confirmed by an Ophthalmologist)
- iii. Speech: Speech Disability means an inability to speak that impairs proper communication and cannot be understood by those who interact with the person. The condition is permanent or incurable. With regard to children, it must be based on an assessment at age five years and above. In case of doubt, an Otorhinolaryngology Expert is to be consulted.
- iv. Physical: Physical Disability means the permanent inability of parts of the body whether caused by loss OR absence OR the inability of any part of the body that can affect their functions in fully carrying out basic activities. Basic activities refer to self-care, movement and changing the position of the body. The condition can occur as a result of injury (trauma) or disease in either the nervous cardiovascular, respiratory, haematology, immunology, urology, hepatobiliary, musculoskeletal, gynaecology and others systems that cause malfunctions. Examples of causes of malfunctions are: a. Limb defects (congenital / acquired), including loss of thumb b. Spinal Cord Injury c. Stroke d. Traumatic Brain Injury e. Dwarfism (achondroplasia) namely \leq 142cm for men and \leq 138cm for women f. Cerebral Palsy Note: Individuals who suffer from impairment without jeopardising their functionality, for example the loss of a finger, additional fingers (polydactyly) and without an earlobe or without a fully-formed earlobe cannot be considered for registration purposes.
- v. Learning Difficulties: mean intellectual capabilities that do not conform with biological age. Those that fall within this category are Late Global Development, Down Syndrome and intellectual disabilities. This category also includes conditions that affect the learning ability of an individual such as autism (autistic spectrum disorder), Attention Deficit Hyperactivity Disorder (ADHD) and specific learning difficulties such as (dyslexia, dyscalculia and dysgraphia).
- vi. Mental Disability: refers to a state of severe mental illness that causes an inability to function in person whether partly or fully in matters related to him/ herself or his / her relationships within the community. Among the types of mental illness are serious and chronic Organic Mental Disorder, Schizophrenia, Paranoia, Mood Disorder (depression, bipolar) and other Psychotic Disorders such as Schizoaffective Disorder and Persistent Delusional Disorders. Note: a. Clients must have undergone psychiatric treatment for at least two years. b. A psychiatrist will determine if the levels of social, cognitive and behavioural control functions of the patient are significantly or severely affected before (s)he is considered for the purpose of registration as a person with disabilities.

¹² Article 1 of the *United Nations Convention on the Rights of Persons with Disabilities*

¹³ Section 2 of *Persons with Disabilities Act 2008*

¹⁴ Section 39 of the *Persons with Disabilities Act 2008*

¹⁵ MWFC website

- vii. Multiple Disabilities: means having more than one type of disability and in general is not appropriate to be classified in category I to VI.

Thus, it denotes that there is no definitive definition of person with disabilities which open various disability categories that are subjectively interpreted by relevant experts in the area.

3.0 Overview Of Persons With Disabilities Act 2008

In 2010, Malaysia was among the first countries to ratify the Convention on the Rights of Persons with Disabilities adopted by *United Nations General Assembly*.¹⁶ The Malaysian Government had also made a step forward by enacting the *Persons with Disabilities Act 2008*. The Statute seeks to provide for social protection services in areas such as health, rehabilitation and education for children with disabilities guided by the *National Policy for Persons with Disabilities* and the *National Plan of Action for Persons with Disabilities*.¹⁷

This statute empowers the National Councils for Persons with Disabilities and Registrar General under the supervision of Director General of Social Welfare.¹⁸ The Council, under Section 3 of the act, consists of members which include the Minister in charge of social welfare as Chairman, the Secretary General of the same Ministry as Deputy Chairman, Attorney General, Secretary General of Ministry who is responsible for finance, transport, human resources, Director General of Health, Chairman of the Commercial Vehicle Licensing Board and not more than 10 members who have appropriate experience, knowledge and expertise on disability issues appointed by the Minister.¹⁹

Meeting of the council is said to be conducted at least three times a year under Section 7 and may invite any person to advise the council on any matters relating to the act.²⁰ The functions of the Council have been described under Section 9 which include overseeing the implementation, making recommendations, co-ordinate, monitor, and review any policies and national plans related with persons with disabilities.²¹

In general, the *Persons with Disabilities Act 2008* promote development and enhancement of the quality of life and well-being of persons with disabilities. There is the promotion of better accessibility to common facilities including services, buildings, public transport, and public amenities.²² This statute also encourages and supports any appropriate measures to recognize the skills at the workplace, employment opportunities for the disabled, foster the level of education for children with disabilities, collect data and research, training professional in rehabilitation services and many other functions directed by the Minister for proper implementation of the Act.

4.0 The Gaps In The Persons With Disabilities Act 2008

Despite all measures to improve the quality of persons with disabilities in the *Persons with Disabilities Act 2008*, there are a significant omissions in the PWD Act, which constitutes a gap to the existing act²³. These include:

- 4.1 The non-remedial nature of the Act makes it non-enforceable in certain conditions;
- 4.2 Section 41 of the statute requires any plaintiff to legal suit arising from the neglect of rights in *Persons with Disabilities Act 2008* to observe an additional ingredient of 'good faith'; and
- 4.3 There is a shield protecting any civil servants and the government by virtue of section 42 of the *Persons with Disabilities Act 2008*
- 4.4 The lack of any or any comprehensive monitoring mechanism against parties who violate the PWD Act or the rights of persons with disabilities;
- 4.5 The lack of specific anti-discrimination and anti-harassment provisions.

The *Persons with Disabilities Act 2008* seeks to enhance the life of persons with disabilities by promoting civil rights and equality. Thus, it is only appropriate that it is non-discriminatory in nature. In order for it to function as a tool for enhancement, it is essential that the statute should have remedial measures. This is due to the fact that one of the important measures including the existence of remedial provision to address any issues of breach might possibly occur in the future.²⁴

¹⁶ Ibid

¹⁷ *Persons with Disabilities Act 2008* Act 685, Preamble.

¹⁸ Yusof, Mohd. Faizal Che. (2011). Akta Orang Kurang Upaya 2008, Harapan dan Realiti: Satu Pendekatan Praktikal, *Praxis, Chronicle of the Malaysian Bar*.

¹⁹ Section 3, *Persons with Disabilities Act 2008*

²⁰ Section 7, *Persons with Disabilities Act 2008*

²¹ Section 9 *Persons with Disabilities Act 2008*

²² Section 26-32 *Persons with Disabilities Act 2008*

²³ Child Rights Coalition Malaysia, Status Report on Children's Rights In Malaysia, December 2012, pp. 20 - 21; Report on the Public forum: 'Persons with Disabilities Act 2008 – What Next', Bar Council Malaysia's Law Reform and Special Areas Committee, 19 January 2009. Retrieved on 22 May 2016 from http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/public_forum_persons_with_disabilities_act_2008_what_next_html.

²⁴ Haswira Nor Mohd Hashim, Anida Mahmood. (2009). *Law, Morality, Justice, Freedom and Equality: The Underlying Concepts*: McGraw-Hill (Malaysia) Sdn . Bhd. .

Significantly, the main purpose of the *Persons with Disabilities Act 2008* is to promote development and protection of the life of persons with disabilities.²⁵ This means that whomever, despite their form of legal entity; being an individual or incorporation, upon breaching any section of the *Persons with Disabilities Act 2008* does not support the promotion of development and protection of life among this group of people.

In 1991, the Uniform Building By-Law 34A (hereinafter referred to as “UBBL 34A”) of the Street, Drainage and Building Act 1991 was enacted. It is required under the by-laws that; buildings constructed be accessible to persons with disabilities; that buildings existing before UBBL 34A must be retrofitted with such facilities within three years; and these facilities must comply with the Malaysia Standard MS 1184: Code of Practice on Access for Disabled Persons to Buildings.²⁶

Apart from that, between the years 1990 to 1993, there were also three Standards for creating facilities for persons with disability which are SIRIM Code of Practice MS 1183:1990, SIRIM *Code of Practice* MS 1184: 1991 and SIRIM *Code of Practice* MS 1331: 1993. In complying with these Standards, all building plans be submitted to the local authority after the date of the Code of Practice is published in the State Gazette. Thereafter, each State must comply with it. Existing buildings must do so within three years of that date (or any extension of that grace period given), but may, on application, be exempted from its requirements to such an extent as the local planning authority thinks fit.

The scope of these SIRIM standards includes all buildings other than private dwelling houses, and it applies to every part of those buildings to which employees, customers, visitors and/or the public in general normally go. The local authority is specifically empowered to exempt buildings with less than 280 square meters of floor area per level from providing access for disabled people to the upper floors, but the ground floor must be accessible to them.

However, despite the passing of the laws and standards, due to the limited power of the National Council for Persons with Disabilities²⁷, and absence of punitive provision in the *Persons with Disabilities Act 2008*, many buildings are still inaccessible to people with disabilities. Since there is no penalty clause in case anyone fails to abide by the provisions.²⁸ This is a clear proof of non-enforceability of *Persons with Disabilities Act 2008*. Furthermore, the non-existence of any punitive provision in the statute has made it not a legal obligation to abide by the *Persons with Disabilities Act 2008*, but merely a choice. This shows that there is no punitive provision in the statute, making it a non-remedial provision and thus, making it non-enforceable.

As far as *Persons with Disabilities Act 2008* is concerned, the purpose of the law is to promote the enhancement of life of persons with disabilities. However, it was found that the Act is without any specific remedy for persons with disabilities in situations where their rights under *Persons with Disabilities Act 2008* is breached.

This can be seen evidently in Section 41 of *Persons with Disabilities Act 2008* which states that any person who intends to bring a legal suit arising from breach of *Persons with Disabilities Act 2008* is stopped by these provision since no suit and legal proceeding can be filed to the courts in any event of act, omission, neglect or default done in good faith towards government especially to the council members.²⁹

This matter is further complicated due to the interpretation of “good faith” itself. One of the main problems with good faith is its definition. Good faith itself has many meanings in which some of them are contradictory and inconsistent with each other. The wide range of meaning attributable to good faith is a difficult concept to be defined. The most common expression of good faith as honesty. Honesty is a moral concept. The essence of honesty is ‘truth and moral rectitude’.³⁰ Good faith can also be defined as the notion of fairness. This was mentioned in the landmark case of *Interfoto Picture Library v Stiletto Visual Programmes Ltd*, where Bingham LJ stated that:

²⁵ *Persons with Disabilities Act 2008*, The Preamble

²⁶ *Uniform Building By-Law 34A of the Street, Drainage and Building Act 1991*

²⁷ The National Council for Persons with Disabilities was established on 14th August 2008 and chaired by the Minister of Women, Family and Community Development. Among the Council’s functions (Section 9, the PWDs Act 2008) are to monitor the implementation of the national policy and national plan of action relating to PWDs ;to make recommendations to the Government on all aspects of PWDs (eg. support, care, protection, rehabilitation, development and well being of PWDs).

²⁸ Parliamentary Debates, House of Representatives, Eleventh Parliament, Fourth Session, Third Meeting, 18 December 2007, page 80 (Datin Seri Dr. Wan Azizah binti Wan Ismail)

²⁹ Section 41 in Part V of *Persons with Disabilities Act 2008* provides that

Protection against suit and legal proceedings

41. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

(a) the Government;

(b) the Minister;

(c) the Council;

(d) any member of the Council or any member of a committee; or

(e) any other person lawfully acting on behalf of the Council,

in respect of any act, neglect or default done or committed by him or it in good faith or any omission omitted by him or it in good faith in such capacity.

³⁰ James Allsop, ‘Good Faith and Australian Contract Law: A Practical Issue and a Question of Theory and Principle’ (2011) 85 *Australian Law Journal* 341,344.

Acting in good faith does not simply mean that [parties] should not deceive each other...its effect is perhaps most aptly conveyed...as 'playing fair', 'coming clean' or 'putting one's cards face upwards on the table'. It is in essence a principle of fair and open dealing.³¹

Meanwhile O'Connor claimed that good faith has to conform to currently acceptable behaviour in the community. It is important to identify which community is to determine the best behaviour. This is described through the provisional meaning adopted in that:

[T]he principle of good faith in English law is a fundamental principle derived from the rule of *pacta sunt servanda* (agreements are to be kept) and other legal rules, distinctively and directly related to honesty, fairness and reasonableness prevailing in the community which are considered appropriate for formulation in new or revised legal rules.³²

Although the phrase "good faith" may mean specific things in certain situations, most courts hold **defendants** to one of two separate standards when determining whether the defendant acted in good faith or in bad faith. The first standard is based on reasonableness. A person or organization may be liable for bad-faith dealing if they refuse to uphold their end of a contract or other bargain for no reason or for a reason that has little to do with the actual situation.³³ The second standard also uses reasonableness to determine whether good faith exists, but it also asks about intention. Under this standard, a defendant may be liable for dealing in bad faith if he did not act reasonably *and* if he knew or should have known there was no reasonable basis to act the way he did. The phrase 'good faith' has been discussed in various commercial contract cases but its definition in torts has been quite vague.³⁴

There is as yet no widely accepted definition of good faith in a contractual context, although the courts have often emphasised honesty and fair dealing. Therefore, it is impliedly this section does not encouraged any proceeding against the council member as a burden to define and prove good faith is rather frustrating.

Apart from Section 41, a person taking action for his/her breached rights under *Persons with Disabilities Act 2008* must also abide to Section 42 of the *Persons with Disabilities Act 2008* which strictly provides that:

Public Authorities Protection Act 1948

42. The Public Authorities Protection Act 1948 [Act 1980] shall apply to any action, suit, prosecution or proceedings against the Government, Council or any member of the Council, any member of a committee or agent of the Council in respect of any act, neglect or default done or omitted by it or him in such capacity.

The manner of construction of the provision has made the *Persons with Disabilities Act 2008* to be inferior to the *Public Authorities Protection Act 1948* wherein with the clauses constructed as such, the government especially the Council is protected from any legal suit that arises from breach of the Act.³⁵

The *Public Authorities Protection Act 1948* is an Act relating to the protection of persons acting in the execution of statutory and other public duties. It refers to any action or proceeding against the Federal Government, State Governments and all entities related. The *Public Authorities Protection Act 1948* was designed to govern rights of persons desirous of alleging claims against public bodies or persons performing public duties and it also controlled the rights of the public bodies or persons to limit the protection which is conferred upon them. Thus, the result is that this has become a possible shield for legal proceedings against government and the more reason for lack of effectiveness in *Persons with Disabilities Act 2008*.³⁶

5.0 Findings

Although there is a support by the government to promote development in the lives of persons with disabilities, evidently from the ratification of the *United Nation Convention on Rights of Disabled Persons 2007* and the enactment of *Persons with Disabilities Act 2008*, there are significant evidence that Malaysia has not yet fully protected the rights of the persons with disabilities. Since the day it was enacted, it is undeniable that the *Persons with Disabilities Act 2008* have given a lot of changes in the lives of persons with disabilities.

However, it is found that *Persons with Disabilities Act 2008* has no punitive provision providing remedy to breach the rights of persons with disabilities. This has made *Persons with Disabilities Act 2008* merely referred to for the purpose of identifying the

³¹ [1989] QB 433,439.

³² J.F.O'Connor, *Good Faith in English Law* (Darmouth Publishing Company, 1990) 102.

³³ What is "good faith"? (n.d.). Retrieved August 19, 2016, from <http://www.rotlaw.com/legal-library/what-is-good-faith/>

³⁴ *ATU v ICTU*, Justice Lutz of the Alberta Court of Queens Bench

³⁵ Md Tah, Akmal Hisyam. "A Need for Remedial Provision to Protect Persons with Disabilities in Malaysia." *ResearchGate*. N.p., Dec. 2013. Web. 8 July 2016.

³⁶ Md Tah, Akmal Hisyam. "A Need for Remedial Provision to Protect Persons with Disabilities in Malaysia." *ResearchGate*. N.p., Dec. 2013. Web. 8 July 2016.

powers of the National Council for Persons with Disabilities, and the definition of persons with disabilities. In addition, its non-remedial nature makes it non-enforceable in certain conditions.

For over eight years of being in operation, there has been no development or improvement made to this Act causing it to remain impotent over the years while the people it means to protect, continue to be systematically discriminated due to its lack of enforcement mechanism. In addition, people who intend to bring legal action for their rights under the *Persons with Disabilities Act 2008* need to go extra lengths to observe and prove the principal of good faith and fulfill the ingredients required by the *Public Authorities Protection Act 148* by virtue of section 41 and 42 of the *Persons with Disabilities Act 2008*. It is fair to say that these requirements are discouragements scaling blunter into the toothless gums of this statute. It portrays that a paradigm shift is needed so that laws relating to persons with disabilities are rights-based and not drafted from a charity or social welfare perspective.

6.0 Conclusion

It is timely for *Persons with Disabilities Act 2008* to be actively enforced to show the commitment by the Malaysian authority in dealing with the legal issues pertaining to the disabled community. An improved law that fully protects and promotes the rights of persons with disabilities would reduce the external barrier and challenges faced by them. Therefore, it is suggested that this statute needs to be revised and amended accordingly to ensure maximum effectiveness of the enforcement. It seems that punitive remedy provisions should be introduced so that everyone treats persons with disabilities with respect and dignity. There is a need to also extend the functions of the Council for Persons with Disabilities to investigate any complaints made by persons with disabilities by establishing a commission or tribunal to address those who are concerned. Future work should consider the interviews with the relevant authorities to get insightful perspective on the issues discussed.

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CONVENTION

1. United Nations Convention on the Rights of Persons with Disabilities

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